

NOTICE TO THE BAR

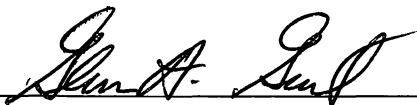
PRETRIAL “NOTICE AND DEMAND” PROCEDURE FOR AUTHENTICATION OF MAPS IN PROSECUTIONS UNDER N.J.S.A. 2C:35-7.1 – FOLLOWING STATE V. WILSON, 227 N.J. 534 (2017)

The Supreme Court Criminal Practice Committee in its January 26, 2018 Supplemental Report included a proposed new Rule 3:10-8 intended to address the Supreme Court's holding and referral in State v. Wilson, 227 N.J. 534 (2017). Report at 49. The Court in Wilson requested that a rule be developed on pretrial notice and demand for the authentication of maps in prosecutions under N.J.S.A. 2C:35-7.1 (distributing, dispensing, or possessing with intent to distribute CDS/analog within 500 feet of public property). Additionally, the Court set out the specific procedures for the State to use in authenticating such a map in lieu of presenting a witness. 227 N.J. at 553-54. The Criminal Practice Committee's proposed rule essentially tracked the Court's language in Wilson.

Subsequent to the closing of the public comment period on the Practice Committee's Supplemental Report, it was determined that the proposed rule would be an evidentiary rule that should be referred to the Committee on the Rules of Evidence. The Supreme Court has made that referral and has asked the Evidence Rules Committee to develop the Wilson holding as an evidence rule.

Pending development and adoption of that evidence rule, the “notice and demand” procedure that the Court set forth in Wilson should be followed for the State to bypass the need to produce a witness to authenticate a proffered map created pursuant to N.J.S.A. 2C:35-7.1(e). Specifically, that “notice and demand” procedure is as follows: (1) The State may give notice to the defendant, at least thirty days before trial, that a map prepared pursuant to N.J.S.A. 2C:35-7.1(e) will be offered at trial for a violation of N.J.S.A. 2C:35-7.1 and may demand an objection to its use within ten days; (2) Such an objection will require the State to produce an authenticating witness who can testify to the map's authenticity and be cross-examined on the methodology of the map's creation and its margin of error; and (3) If there is no such objection, the map may be admitted without production of an authenticating witness. 227 N.J. at 553-54.

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